SINGAPORE REPORTS

HUANG SHENG CHANG & ORS. v. ATTORNEY GENERAL

[O.C.J. (Wee Chong Jin C.J.) October 20, 1983]
[Singapore – Originating Summons Nos. 102, 103, 104, 134 & 135 of 1983]

Company Law – Restriction from managing companies – Contravention of provisions of Companies Act (Cap. 185), s. 130

Company Law – Offer to sell shares – Documents deemed to be prospectuses – Non-compliance with requirements of Companies Act – Disqualification under s. 130 of Companies Act in public interest – Companies Act (Cap. 185), ss. 4, 39(4), 43, 130 & 363.

The five applicants were on February 9, 1983 convicted on their pleas of guilty in a District Court (see [1983] 2 M.L.J. xcvi). The charge against each was that he had committed an offence punishable under section 39(4) read with section 43 of the Companies Act (Cap. 185) in that being a director of C.C.C. (Holdings) Ltd. he had during April and May 1982 "caused documents to be sent out offering for sale shares in the C.C.C. (Holdings) Ltd. to the public and these documents are deemed to be prospectuses issued by the company by virtue of section 43 of the Companies Act, Chapter 195, and the documents do not comply with the requirements of the Companies Act". Applicant Huang Sheng Chang was fined $1,000, applicants Quek Leng Chye, Gan Khai Choon and Derrick Chong were each fined $500 and applicant Ng Cheng Bok was given a 12 months' conditional discharge. They were also charged with having contravened the provision of s. 363(3) of the Companies Act. Huang Sheng Chang was fined $1,000 and Derrick Chong was fined $500. The other three applicants consented to this charge being taken into consideration by the trial judge in considering the appropriate sentence for each of them in respect of the section 39(4) offence.

All the applicants after their conviction resigned from all directorships in companies incorporated in Singapore. The resignations were necessitated by the provisions of section 130 of the Companies Act (Cap. 185). Each of the five applicants then applied for the leave of court to be a director of and/or be concerned and take part in the management of the companies of which he was a director before his conviction. The Minister for Finance who was represented by the Attorney-General opposed the granting of the applications.

Held: (1) under s. 130 of the Companies Act (Cap. 185), an applicant has to make out a sufficient case for the court to depart from the clear legislative policy and in deciding whether a sufficient case has been made out, the court should bear in mind that the section is not punitive but protective;

(2) the court, in exercising its discretion whether to grant leave or not, ought to consider;

(a) the nature of the offence of which the applicant has been convicted;

(b) the nature of the applicant's involvement;

(c) the applicant's general character;

(d) the structure and the nature of the business of each of the companies which the applicant seeks the leave of the court to become a director of or to take part in its management;

(e) the interests of the general public, the shareholders, creditors and employees of these companies and the risks to the public and to those persons should the applicant be permitted to be a director or to take part in management;

(3) although it is obvious that every disqualification under section 130 of the Companies Act (Cap. 185) involves some financial hardship to an applicant and in some cases may involve management or even financial problems to the company or companies of which the applicant is a director or concerned in the management, it must be recognised by the Court in an application before it under section 130(2) that when Parliament enacted this disqualification section it must be taken to know that that is the effect of the enactment and have come to the conclusion that the protection of the public outweighs the punitive effect the enactment may have on a person to whom it applies;

(4) all five applicants should not be allowed leave to be directors or be concerned in the management of C.C.C. (Holdings) Ltd. and City Country Club Pte. Ltd. They would, however, be permitted to take part in the management of their respective companies.

Case referred to:

(1) *Re Magna Alloys & Research Pty. Ltd.* 1 A.C.L.R. 203

ORIGINATING SUMMONS.

Tan Kok Quan for the applicant in O.S. No. 102 of 1983

H.E. Cashin for the applicants in O.S. Nos. 103 & 104 of 1983

Rajendran Sinnathamby for the applicants in O.S. Nos. 134 & 135 of 1983.

Tan Boon Teik (Attorney-General), *Fong Kwok Jen* (Dy. Sr. State Counsel) with him, for respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J.: The five applicants in these five Originating Summons were on February 9, 1983 convicted on their pleas of guilty in a District Court. The charge against each was that he had committed an offence punishable under section 39(4) read with section 43 of the Companies Act (Cap. 185) in that being a director of C.C.C (Holdings) Ltd. he had during April and May 1982 "caused documents to be sent out offering for sale shares in the C.C.C. (holdings) Ltd. to the public and these documents are deemed to be prospectuses issued by the company by virtue of section 43 of the Companies Act, (Cap. 185), and

the documents do not comply with the requirements of the Companies Act.". Applicant Huang Sheng Chang was fined $1,000/-, applicants Quek Leng Chye, Gan Khai Choon and Derrick Chong were each fined $500/- and applicant Ng Cheng Bok was given a 12 months' conditional discharge.

Additionally, the five applicants were also charged that they in April 1982, in furtherance of the common intention of them all, made offers to members of the public to purchase shares in the C.C.C. (holdings) Ltd. in contravention of section 363(3) of the Companies Act. Huang Sheng Chang and Derrick Chong pleaded guilty to this charge and Huang Sheng Chang was fined $1,000/- and Derrick Chong was fined $500/-. The other three applicants consented to this charge being taken into consideration by the trial judge in considering the appropriate sentence for each of them in respect of the section 39(4) offence.

Together with the five applicants, Winston Chen Chung Ying, an advocate and solicitor and a partner of the solicitors' firm of Shook Lin & Bok, was charged with and convicted of having abetted the five applicants in the commission of the section 39(4) offence. The firm of Shook Lin & Bok were the solicitors for C.C.C. (Holdings) Ltd. and Winston Chen Chung Ying was the partner who was in sole charge of all C.C.C. (Holdings) Ltd.'s matters.

All the applicants after their convictions resigned from all their directorships in companies incorporated in Singapore. The resignations were necessitated by the provisions of section 130 of the Companies Act, (Cap. 185) (hereinafter referred to as "the Act"). Section 130 reads as follows:–

"130.- (1) Where a person is convicted whether within or without Singapore –

(a) of any offence in connection with the promotion, formation or management of a corporation; or

(b) of any offence involving fraud or dishonesty punishable on conviction with imprisonment for three months or more; or

(c) of any offence under section 132 or 303,

and that person, within a period of five years after his conviction or, if he is sentenced to imprisonment, after his release from prison, without the leave of the court is a director or promoter of or is in any way whether directly or indirectly concerned or takes part in the management of a company he shall be guilty of an offence under this Act and shall be liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding one thousand dollars or both such imprisonment and fine.

(2) A person intending to apply for the leave of the Court under this section shall give to the Minister not less than fourteen days' notice of his intention so to apply.

(3) On the hearing of any application under this section the Minister may be represented at the hearing of and may oppose the granting of the application."

Each of five applicants now apply for the leave of the court to be a director of and/or be a director of and/or be concerned and take part in the management of the companies of which he was a director before his conviction. In these applications the Minister for Finance who was given notice of the applications as required by section 130(2) is represented by the Attorney-General and opposes the granting of the applications as he is entitled to do by virtue of section 130(3).

The material primary facts which led to their convictions are not in dispute but before I give a brief summary of the facts it is necessary to set out the material provisions of sections 39, 43, 363 and 4 of the Act.

The material provisions of section 43 reads:–

"43 (1) Where a corporation allots or agrees to allot to any person any shares in ... the corporation with a view to all or any of them being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes to deemed to be a prospectus issued by the corporation, and all written laws and rules of law as to the contents of prospectuses and to liability in respect of statements and non-disclosures in prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly as if the shares ... had been offered to the public and as if persons accepting the offer in respect of any shares ... were subscribers therefor but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of statements or non-disclosures in the document or otherwise."

The material provisions of section 39 read:–

"39 (1). To comply with the requirements of this Act a prospectus –

(d) shall, subject to the provisions contained in Part III of the Fifth Schedule, state the matters specified in Part I of that Schedule and set out the reports specified in Part II of that Schedule;

39(4). Where a prospectus relating to any shares in ... a corporation is issued and the prospectus does not comply with the requirements of this Act, each director of the corporation and other person responsible for the prospectus shall be guilty of an offence under this Act and shall be liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding five thousand dollars.

39(5). In the event of non-compliance with or contravention of any of the requirements set out in this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if –

(a) as regards any matter not disclosed, he proves that he was not cognizant thereof;

(b) he proves that the non-compliance or contravention arose from an honest mistake on his part concerning the facts; or

(c) the non-compliance or contravention was in respect of matter which in the opinion of the court dealing with the case was immaterial or was otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused."

The material provisions of section 363 read: –

"363(3). A person shall not make an offer to the public or to any member of the public (not being a person whose ordinary business it is to buy or sell shares, whether as principal or agent) of any shares for purchase.

363(4). Subsection (3) shall not apply –

(b) where the shares to which the offer relates are shares which a corporation has allotted or agreed to allot with a view to their being offered for sale to the public and such offer is accompanied by a document that complies with all laws and rules of law as to prospectuses;

363(5). Every person who acts ... in contravention of this section shall be guilty of an offence under this Act and shall be liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding one thousand dollars or to both such imprisonment and fine ..."

The material provisions of section 4 read: –

"4(6). Any reference in this Act to offering shares ... to the public shall, unless the contrary intention appears, be construed as including a reference to offering them to any section of the public, whether selected as clients of the person issuing the prospectus or in any other manner; ..."

The material facts are as follows. C.C.C. (Holdings) Ltd. was first incorporated on August 11, 1979 as a private company under the name of City Country Club Private Limited. It was incorporated as a result of a pre-incorporation agreement dated August, 1 1979 entered into between Huang Sheng Chang ("Huang"), Derrick Chong ("Chong"), Ng Cheng Bok ("Ng") who are three of the applicants in these proceedings and one Tan Tee. Tan Tee entered into this agreement "as nominee" on behalf of one of the companies owned by a holding company known as Hong Leong Holdings Ltd. of which the applicant Quek Leng Chye ("Quek") was a director.

Prior to the pre-incorporation agreement, it was agreed that Huang, Chong, Hong Leong Holdings Ltd. and a fourth party would enter into a business venture to buy and develop a piece of land at Stevens Road and carry thereon in the business of a proprietary club. This property was at that time owned by a publicly listed company, City Development Ltd. of which Quek was a director. This business venture was originated by Huang and Chong who thought the property was suitable for development into a club. The fourth party who signed the pre-incorporation agreement was Ng, who was brought in by Huang.

Under the pre-incorporation agreement, the parties thereto agreed to participate in and subscribe to the shares in the company to be formed under the agreement in the following proportions: –

Huang	30%
Tan Tee (as nominee)	30%
Ng	30%
Chong	10%

Of the 10% which Chong agreed to subscribe for, he was acting as nominee of Huang and Huang's family in respect of two-thirds.

Huang, Chong and Ng were appointed directors on the incorporation of C.C.C. (Holdings) Ltd. (the company) and Quek and Gan Khai Choon ("Gan") were appointed directors on September 6, 1979 on their nomination by Queens Pte. Ltd., a wholly-owned subsidiary of Hong Leong Holdings Ltd. The decision to use Queens Pte Ltd. as Hong Leong Holdings Ltd.'s vehicle in the joint venture was made by Quek. Soon after the company's incorporation one million shares fully paid for in cash were issued to the parties in the proportions agreed upon and the company proceeded to purchase the land at Stevens Road from City Development Ltd. for $8.5 million. The conveyance was completed on October 17, 1979 and the purchase was financed by a term mortgage for three years to Hong Leong Finance Ltd. for $6 million. This loan was the first of several mortgages to the same finance company.

At the formative stage of this venture Huang engaged Winston Chen Chung Ying ("Winston Chen') to act for him and it was Winston Chen who prepared the pre-incorporation agreement and when the company was incorporated acted for the company. From the beginning Huang had foremost in his mind that the profits expected from the de-

velopment of the land as a club should be given the lowest exposure to tax and Winston Chen, acting for Huang in July 1979, obtained an opinion as to how to achieve this object from Mr. Steven Oliver, one of the top revenue English Queen's counsel. The advice of the Queen's counsel envisaged a scheme whereby the promoter or promoters form a holding company to buy and develop the land as a club house. The land is then re-valued on completion of the development and the holding company issues bonus shares from the surplus thrown up by the re-valuation. The holding company then forms a subsidiary company and leases the land to the subsidiary to run a club. The subsidiary would canvass for members and persons who wish to become members are obliged to purchase shares in the holding company from the promoters.

As it was envisaged that there would eventually be around 2,000 members, this scheme which necessarily involves the sale of shares to those members, would require the issuance of a prospectus in compliance with the Act. Huang was aware of this and in September 1980 he consulted a Mr. Westley of Wardley Ltd., a merchant bank. Mr. Westley by a letter of October 7, 1980 to Huang stated that in his opinion, should the scheme involve the sale of shares a prospectus would be required and suggested that the promoters of the club sell membership rights instead. Huang informed Winston Chen of Mr. Westley's views on November 4, 1980.

Nearly six months later, on May 20, 1981 Huang next consulted Winston Chen who recorded Huang's instructions in a note which read: –

"(a) Equity participation out. There is going to be prospectus problem.

(b) Wants to have proprietary club.

(c) To get back costs of land from membership fees in club – taxable.

(d) Management by management co.

(e) Wants to be able to kick out club after 10 to 20 years.

Discussed – changes his mind upon hearing 40% tax on entrance fee. To think of a scheme for him."

Thereafter on September 18, 1981 all the applicants except Ng attended a meeting at which Winston Chen and two accountants, Keith Tay and Damian Hong of the accountancy firm of Peat, Marwick, Mitchell & Co. were in attendance. The meeting was to consult the accountants on the tax aspects of the scheme suggested by the Queen's Counsel. Mr. Winston made a contemporaneous note of what happened at the meeting. The note reads: –

"(1) I explained scheme and problems regarding prospectus ...

(2) Keith Tay: Nominee Co., as I read the opinion, is acting as bare nominee, Thus the nominee co. books will not have assets. Proprietary Club.

(3) QLC: Let the members own the operating co: but not more than 50%.

(4) I am to work out prospectus problem .. *

(5) KT will examine scheme and let parties know."

Shortly thereafter Winston Chen sought in opinion from Mr. David Bennett, an Australian Queen's Counsel, as to whether members of a private club are a "section of the public" within the meaning of that expression in section 4(6) of the Act. In his written opinion dated October 19, 1981 Mr. Bennett stated that the phrase "section of the public" must be interpreted as a matter of degree and that he had "little doubt that an offer to the members of a club having some thousands of members ... would be an offer to a section of the public and ... an offer to all the members of a club whose membership totalled three would not."

On October 31, 1981 Winston Chen wrote sending Huang a copy of Mr. Bennett's written opinion. In his letter to Huang, Winston Chen said: –

"... in view of the uncertain position in law ... it would be preferable to have a prospectus issued unless exemption is obtained from the Registrar of Companies under section 39A of the Companies Act."

It is not disputed that section 39A does not empower the Registrar of Companies to exempt anyone from the obligation to issue a prospectus where a prospectus is required by the Act.

Sometime in November 1981 Huang discussed with Winston Chen a bonus issue to be made by the company by re-valuing the property followed by sale of shares to those who wished to become members of the club and Huang informed Winston Chen that it was decided that such applicant must buy one share of the company with a par value of $5,000/- at a price of $30,000/- to become a member of the club. In a note in his own handwriting Huang envisaged an increase of the issued share capital of the company to 4,000 shares of $5,000/- each, of which 2,000 shares are to be sold at $30,000/- each realising a total of $60,000,000/-.

On November 17, 1981 Huang, Quek, Chong and Winston Chen met. Winston Chen was told that the scheme would proceed although Quek expressed doubts about it and Winston Chen told the meeting that he would be seeing Mr. Lee Theng Kiat, the Assistant Registrar of Companies that afternoon "to seek his views on prospectus". The note made by Winston Chen of the meeting reads: –

"Attending S.C. Huang

... ...

(1) Gave me valuation on land.
Q.L.C. & D.C. comes in at 11.25 a.m.

(2) Advised that if they lose control of Club. Co. they will lose management of Club despite management (agreement).

(3) All agreed if scheme works well and good if not we have tried. QLC has doubts on scheme but says go ahead.

(4) Explained that I am meeting Lee Theng Kiat this afternoon to seek his views on prospectus. If views adverse, scheme need rethinking.

(5) QLC: In name of Queens without transfer. I said yes.

(6) To telex steps to Steven Oliver Q.C. for approval.

(7) Qualifying status $1000 instead of $500.

(8) Choice of brokers left to clients.

(9) To adhere to target of 2 months from today.

(10) To go ahead – they said.

(11) D.C. to give me brochure for Club.

(12) Wants corporate members to have 2 shares to qualify.

(13) C.C. to be now called C.C. Holdings Ltd."

Winston Chen's meeting with Mr. Lee Theng Kiat was an informal one which he followed up with a letter dated December 2, 1981 to the Registrar of Companies, marked attention Mr. Lee Theng Kiat, a draft of which had been sent to and approved by Huang. The letter set out briefly the proposed scheme and Winston Chen's opinion that

"the scheme ... is not an offer of shares to the public as defined by section 4(6) of the Companies Act and the requirements of this Act for prospectus need not be complied with. See pages 58 to 60 of *Palmer's* Companies Precedents 17th Ed. (particularly pg. 58) enclosed."

Mr. Lee Theng Kiat on January 11, 1982 in reply said: –

"2. In the context of the situation outlined by you in your letter, I am of the view that since no fresh shares are being offered there will be no applications for shares of the Company to be made by any of the qualified members. Thus, section 37(2) of the Companies Act would not apply and a prospectus not required to be registered."

In a further letter dated February 10, 1982 Mr. Lee Theng Kiat said that "since no invitation to the public is being made, the Company is exempted from the provisions of section 37(1) under section 37(2)".

Winston Chen then informed the applicants of the "decision of the Registry of Companies and advised them that the scheme could proceed" without the need to issue a prospectus. He also advised them that they should not advertise and should only invite their friends.

Accordingly, a wholly-owned subsidiary of the company was incorporated. The company's name was changed to C.C.C. Holdings Ltd. and converted into a public company and the wholly owned subsidiary took the company's original name of City Country Club Pte. Ltd. At an Extraordinary General Meeting of the company it was resolved to have a bonus issue and a rights issue. The 5,000,000 issued share of $1 each of the company were first consolidated into 1,000 shares of $5,000 each and the authorised capital was increased to $20 million by the creation of 3,000 additional shares of $5,000 each. Of the new shares, 1,000 were offered to the existing shareholders (the applicants) as a one for one rights issue at a premium of $25,000 each. The shares in the rights issue were uncalled. A sum of $10 million being part of the surplus created by a revaluation of the property at Stevens Road was capitalised and appropriated to pay for the other 2,000 new shares of $5,000 each which shares were then distributed as a two for one bonus issue to those existing shareholders (the applicants) who accepted the shares offered in the rights issue. All the existing shareholders accepted the shares in the rights issue.

On March 30, 1982 the subsidiary company had its first board meeting. Huang and Chong, the subscribing members and the first directors appointed the other three applicants Quek, Gan and Ng and two others as directors. All the directors were present at the board meeting at which Winston Chen was in attendance. Prior to the meeting all the applicants had submitted lists of individuals and companies whom they wished to invite to be members of the club. Huang's list consisted of 35 individuals and 6 companies. Quek's list consisted of 10 individuals. Gan's list consisted of 23 individuals and one company. Ng's list consisted of 21 individuals and Chong's list consisted of 257 individuals and 8 companies. The meeting discussed a draft letter of invitation to the proposed in-

vitees and Winston Chen vetted and corrected the draft.

By the time the first invitation was sent out the list had grown to 390 individuals and 17 companies and the directors had on March 31, 1982 appointed a firm of brokers, Lim & Tan (Pte.) to sell the 2,000 bonus shares allotted to the applicants.

From April 2, 1982 invitations were despatched. Each invitee received a letter signed by Huang in the following terms:–

"As you are known to our directors to be of high repute, we are pleased to invite you to join the exclusive City Country Club. Enclosed herewith you will find a brochure and a copy of the Rules of the Club together with an application form.

If you accept our invitation please complete the application form and return the same to us together with your payment for the entrance fee as soon as possible.

The entrance fee for an individual is $2,000/- and for a corporation or firm is $3,000/- (2 nominees) and your attention is drawn to Rule 12 of the Rules of the Club.

Upon acceptance of this invitation you shall be a qualified person under Rule 9 of the Rules of the Club and shall be entitled to the rights under Rule 10 of the Rules of the Club.

To become a member of the Club you must within a period of one month of your becoming a qualified person become the registered holder in CCC (Holdings) Limited of:

(a) in the case of an individual, one (1) ordinary share

(b) in the case of a firm or corporation two (2) ordinary shares.

You may contact the broking firm named below with a letter of confirmation from the Board confirming that you are a qualified person of the Club to make your offer to purchase the share/s.

Yours truly
Sgd. S.C. Huang
Chairman

DC:sc
Broking firm: Lim & Tan (Pte.)
Tel: 2244988
(Mrs. Esther Seet)
30 Stevens Road,
Singapore 1025
Tel: 7338822"

The invitation letter and its enclosures disclosed no information whatsoever of CCC (Holdings) Limited except that the land occupied by the City Country Club Private Limited "occupies some 4 acres in the extent and is leased (for 10 years from 1982) from CCC (Holdings) Limited." Furthermore, the invitation letter did not disclose that the purchase price of one ordinary share of $5,000/- of CCC (Holdings) Limited would be $30,000/- i.e. at a premium of $25,000/-. It is common ground that as at March 31, 1982 the net tangible asset backing for each ordinary share of $5,000/- each was $7,374/- and, if the rights issue were fully paid up, the net tangible asset backing for each ordinary share of $5,000/- would be $13,030/-.

Had a prospectus been issued its contents, pursuant to the requirements of the Companies Act, would have disclosed to an invitee the net tangible asset backing for each share of CCC (Holdings) Limited, the manner in which the Company proposed to finance the total cost of the development, the extent of the company's loans from Hong Leong Finance Ltd. and how the loans and interest are to be repaid.

Several Australian cases were referred to me by counsel. In these cases similar applications were before the Australian courts based on a section of their Companies Act identical to our section 130. The Australian courts have consistently held in the words of Bowen C.J. in *Re Magna Alloys & Research Pty. Ltd.*[1] that,

"the policy to which the section gives effect is that a person convicted of an offence of the type specified in that section is not to be permitted to act as a director or take part in the management of a company. The section is not punitive. It is designed to protect the public and to prevent the corporate structure from being used to the financial detriment of investors, shareholders, creditors and persons dealing with the company. In its operation it is calculated to act as a safeguard against the corporate structure being used by individuals in a manner which is contrary to proper commercial standards."

In my opinion, these words are apt to describe the legislative policy behind our Section 130.

The Australian courts have also held that an applicant seeking the leave of the court to act as a director or to take part in the management of a company bears the onus of establishing that the general policy of the legislature laid down in the section ought to be made the subject of an exception in his case. So too, in my opinion, under our section 130 an applicant has to make out a sufficient case for the court to depart from the clear legislative policy and in deciding whether a sufficient case has been out, the court should bear

in mind that the section is not punitive but protective.

The court, in exercising its discretion whether to grant leave or not, ought to consider:–

(1) the nature of the offence of which the applicant has been convicted;

(2) the nature of the applicant's involvement;

(3) the applicant's general character;

(4) the structure and the nature of the business of each of companies which the applicant seeks the leave of the court to become a director of or to take part in its management;

(5) the interests of the general public, the shareholders, creditors and employees of these companies and the risks to the public and to those persons should the applicant be permitted to be a director or to take part in management.

I now turn to deal with the case of each applicant separately.

1. *Originating Summons No. 102 of 1983 – Huang Sheng Chang.*

Huang seeks the leave of the court "to be concerned and take part in the management of and be a director of the following 17 companies:–

1. S C Enterprises Pte. Ltd.
2. S C Management Pte. Ltd.
3. S C Securities Pte. Ltd.
4. S C Trading Pte. Ltd.
5. R & L Holdings Pte. Ltd.
6. Orchard Hotel (S) Pte. Ltd.
7. Diners Club (S) Pte. Ltd.
8. Diners World Travel Pte. Ltd.
9. Diners World Holding Pte. Ltd.
10. Diners Publishing Pte. Ltd.
11. Diners World Forwarders Pte. Ltd.
12. S C Travel Pte. Ltd.
13. Orchard International Hotels (S) Pte. Ltd.
14. OHI Holding Pte. Ltd.
15. CCC (Holdings) Ltd.
16. City Country Club Pte. Ltd.
17. Len Ro Pte. Ltd."

Of these one, CCC (Holdings) Ltd., is a public limited company and the other sixteen are private limited companies.

In his affidavits, Huang divides the 17 companies into three groups. Under one group (Group A) are the companies of which he and his family have all or the majority shares. Under another group (Group B) are the companies of which he and his family are minority shareholders. The third group (Group C) consists of two companies, CCC (Holdings) Ltd., which is the only public company of the 17 companies, and City Country Club Pte. Ltd. He is the Chairman of all but one of the 17 companies. In one of his affidavits he deposes that any disability on his part to serve as a director or concern himself with the management of the Group A companies would cause him and those companies grave personal and commercial hardships as there is no member of his family who has the necessary experience to take over and make the executive, managerial and financial decisions and in that event these companies would have to be wound up. It is to be observed that he does not make similar assertions in respect of the Group B and Group C companies.

The main submissions advanced on behalf of Huang and in support of his application are (1) that section 39(4) of the Companies Act creates an offence that is technical in nature and of the character of strict liability offences and (2) that there was no intention on his part to unlawfully avoid the issue of a prospectus.

In my opinion submission (1) is untenable. It disregards the provision of section 39(5) which expressly absolves a director from incurring any liability by reason of non-compliance or contravention of any of the requirements set out in section 39 if –

"(a) as regards any matter not disclosed, he proves that he was not cognizant thereof;

(b) he proves that the non-compliance or contravention arose from an honest mistake on his part concerning the facts; or

(c) the non-compliance or contravention was in respect of matter which in the opinion of the court dealing with the case was immaterial or was otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused."

Huang's case is that he relied completely on professional legal advice as to whether or not the issue of a prospectus was required under the scheme approved by the directors and he was willing to issue a prospectus if he had been so advised. However, he pleaded guilty to a charge under section 39(4). He was represented by counsel and the only inference that can be drawn from his plea of guilty is that he could not plausibly put forward before the trial court a defence based on (a), (b) or (c) of section 39(5). The only other factor Huang advances is "grave personal and commer-

cial hardship" to him and the family companies (Group A companies) if his application is refused by the court, the reason being that no member of his family has the necessary experience to replace him. He has placed no evidence before me on this aspect of grave personal and commercial hardship. The scanty information contained in his affidavits does not, in my opinion, support any inference of such hardship. Furthermore, in the case of the Group B and Group C companies, Huang has not even alleged that such hardship would befall him or those companies if his application is refused.

Although it is obvious that every disqualification under section 130 of the Act involves some financial hardship to an applicant and in some cases may involve management or even financial problems to the company or companies of which the applicant is a director or concerned in the management, it must, in my view, be recognised by the Court in an application before it under section 130(2) that when Parliament enacted this disqualification section it must be taken to know that that is the effect of the enactment and have come to the conclusion that the protection of the public outweighs the punitive effect the enactment may have on a person to whom it applies.

In Huang's case, he and Chong (the applicant in O.S. 103 of 1983) conceived the scheme of purchasing the Steven Road properly from City Development Ltd. (a company in which the Hong Leong group of which Quek and Gan were directors have a substantial interest) and developing it as a proprietary club. Huang was the principal spokesman for the shareholders of the company which purchased the property and who engaged and first gave instructions to the solicitors of the company. Clearly, he was the one most involved in the entire scheme which eventually ran foul of the prospectus requirements of the Act. It was a scheme which he and all the others involved in it knew, if the projected 2000 invitees were persuaded to apply for membership and take a share each in the holding company, would result in enormous profits (some tens of millions) from these invitees. It was highly unlikely, to put it at its lowest, that all or a significant proportion of the 2000 shares which were available to invitees under the scheme would be taken up if a prospectus in compliance with the Act were issued to each invitee, thus resulting in a situation, possibly a financial disaster to the original shareholders, which they must have wanted to avoid at any cost.

Accordingly, I reject Huang's application for leave to be a director of or to be concerned in and take part in the management of CCC (Holdings) Ltd. and City Country Club Pte. Ltd.

With regard to the 7 companies (earlier referred to as the Group B companies) of which Huang and the members of his family are minority shareholders, and which are private limited companies I am satisfied, after careful consideration of all the relevant factors, that I should not grant Huang leave to be a director but should permit him to be concerned in or take part in management.

With regard to the 8 companies (earlier referred to as the Group A companies) of which Huang and the members of his family own all or a substantial majority of the issued shares of these private limited companies, I am also satisfied, after careful consideration of all the relevant factors, that I should not grant Huang leave to be a director but I should permit him to be concerned in or take part in their management.

2. *Originating Summons No. 103 of 1983 – Derrick Chong Soon Choy*

Chong seeks the leave of the Court to be concerned in and take part in the management of and be a director of the following companies: –

1. SMT Pte. Ltd.
2. Nedaa Pte. Ltd.
3. CCC (Holdings) Ltd.
4. City Country Club Pte. Ltd.

In his affidavit he deposes that Nedaa Pte. Ltd. is his personal investment company whose 25,000 issued shares are wholly owned by him and his family and which is chiefly involved in the purchase and holding of shares. He says he runs the company and decides which shares should be bought and held and that it cannot be effectively run if he is not permitted to be a director. He deposes that SMT Pte. Ltd. is a company in which Nedaa Pte. Ltd. holds 25% of the 10,000 shares and by virtue of Nedaa's shareholding he is a director of SMT Pte. Ltd. whose chief trading activity is in leguminous seeds of which he is not knowledgeable.

He deposes that his vocation is that of a manager of clubs having been engaged in managing clubs for over 20 years during the last 16 of which he was the manager of the American Club, but he does not allege that it would cause him financial

hardship if he is not permitted to be director or concerned in and take part in the management of the above-mentioned four companies.

The main thrust of his submission is that his 10% shareholding in CCC Holdings Ltd. was a gift to him by the principal shareholders who were Huang on the one hand and Quek and Gan of the Hong Leong Group on the other. He says that his role in the matter was as a go-between Huang and the Hong Leong Group and after the subsidiary City Country Club Pte. Ltd. was incorporated he directed his attention to the building of the club premises and made available to the other directors his experience as a club manager. He admits that he was aware that a prospectus might be required for the sale of the bonus shares of CCC Holdings Ltd. but left the "technicalities and legalities" of this to Winston Chen, the Company's legal adviser.

For the reasons I have given in rejecting Huang's application, I reject Chong's application for leave to be a director of or be concerned in and take part in the management of CCC (Holdings) Ltd. and City Country Club Pte. Ltd. With regard to Chong's application in respect of the other two companies, which are private limited companies, I am satisfied, after careful consideration of all the relevant factors, that I should not permit him to be a director but should permit him to be concerned in and take part in their management.

3. *Originating Summons No. 104 of 1983 – Ng Cheng Bok*

Ng seeks the leave of the Court to be concerned in and take part in the management of and be a director in the following companies: –

1. Diners Club (S) Pte. Ltd.
2. Diners World Travel Pte. Ltd.
3. Diners World Holdings Pte. Ltd.
4. Diners Publishing Pte. Ltd.
5. S C Travel Pte. Ltd.
6. Bee Huat & Co. Pte. Ltd.
7. Ng Cheng Bok Realty Pte. Ltd.
8. World-Wide Business Centres Pte. Ltd.
9. C. B. Hilliard Pte. Ltd.
10. CCC (Holdings) Ltd.
11. City Country Club Pte. Ltd.

In his two affidavits Ng deposes that he became a director of the Diners Club and associated companies of this Diners Club through Huang and it was through Huang that he took a 10% interest in CCC (Holdings) Ltd. He deposes that he really took no part at all in the entire matter which eventually resulted in his conviction and rarely attended directors' meetings as he left the business side of the venture to Huang in whom he had complete confidence. With regard to the legal side he was content that it was in the hands of Messrs. Shook Lin & Bok, a reputable firm of corporate lawyers and had every confidence in the integrity and ability of Winston Chen, the solicitor who was in charge of the matter.

In my opinion, it must be inferred, having regard to the Ng's huge capital involvement in the entire venture, and to the enormous profits that would result if all the 2,000 shares made available under the scheme to the invited members of the public were taken up without the issue of a prospectus in compliance with the Act, that he was aware that the scheme attracted the prospectus requirements of the Act and was prepared to acquiesce in any manoeuvre, proper or not, to avoid the issue of a prospectus to the invited members of the public.

Accordingly, I reject Ng's application for leave to be director of or be concerned in and take part in the management of CCC (Holdings) Ltd. and City Country Club Pte Ltd. With regard to the other 9 companies named in Ng's application which are private limited companies, I am satisfied, after careful consideration of all the relevant factors, that I should not permit him to be a director but should permit him to be concerned in or take part in their management.

4. *Originating Summons No. 134 of 1983 – Gan Khai Choo*

Gan seeks the leave of the Court to be a director or promoter of and/or to be concerned in or take part in the management of any company or companies incorporated or to be incorporated in Singapore or alternatively to be director of and/or be concerned and take part in the management of the following companies: –

1. Armidale Investment Pte. Ltd.
2. Citimac Pte. Ltd.
3. Hong Leong Nominees (Pte.) Ltd.
4. Singapore Credit (Pte.) Ltd.
5. Singapore Finance Ltd.
6. King's Hotel Ltd.
7. FLS Automation Pte. Ltd.
8. Hong Leong Finance Ltd.
9. CCC Holdings Ltd.
10. City Country Club Pte. Ltd.
11. Singapore Nominees Pte. Ltd.

Gan filed three affidavits on his own behalf. He has also filed three affidavits by others in support of his application. In one of his own affidavits he discloses that he held his directorship in CCC Holdings Ltd. as nominee of Queens Pte. Ltd. which is a wholly owned subsidiary of Hong Leong (Holding) Ltd. He himself has an interest in the parent company Hong Leong (Holdings) Ltd. of 0.4% and it follows that he has personally a nominal interest in CCC (Holdings) Ltd. It is also common ground that Queens Pte. Ltd. holds 30% of the shares in CCC (Holdings) Ltd. and nominated besides Gan, Quek Leng Chye (the applicant in O.S. 135 of 1983) as a director of CCC (Holdings) Ltd.

Gan deposes that Quek and he were content to leave the detailed planning in respect of the entire venture to Huang, the major shareholder, and Chong, who was to be an executive of the club and that consequently he was not present at every meeting held between Huang and the company's professional advisers. He says that on the September 18, 1981 meeting at which he was present he first became aware that the proposed club scheme might require the issue of a prospectus. On his part he was content to leave the prospectus question to Winston Chen (of Messrs. Shook Lin & Bok, the company's solicitors) to deal with as it was a legal matter. He says that he was out of Singapore and was therefore not present at the next Board meeting held on November 17, 1981 and he was not aware of Winston Chen's meeting and subsequent correspondence with Mr. Lee Theng Kiat, Asst. Registrar of Companies on the prospectus question.

Of the 11 companies of which Gan held directorships, four are public companies of which three are listed on the Stock Exchange of Singapore. Gan was also the Group General Manager of two of these listed companies namely, Hong Leong Finance Ltd. and Singapore Finance Ltd. All the 11 companies except three, namely CCC (Holdings) Ltd., City Country Pte. Ltd. and FLS Automation Pte. Ltd. are either wholly owned or are controlled by the Hong Leong Group of companies. Besides Gan's small personal equity in Hong Leong Finance Ltd., he has no shares in the other ten companies and it is safe to assume that he held his directorships as a nominee of the persons who control the Hong Leong Group of companies. These persons are members of the Quek family of which Quek Leng Chye (the applicant in O.S. 135 of 1983) is one.

In one of the supporting affidavits, a Mr. Chan Kin Kum as one of the secretaries of the three listed public companies namely, King's Hotel Ltd. Singapore Finance Ltd. and Hong Leong Finance Ltd. has disclosed resolutions by the respective directors of these companies expressing their intention to re-appoint Gan to their respective Boards should his present application be granted. It is to be observed that the members of the Quek family constitute the majority of the Board of Hong Leong Finance Ltd. and they constitute a sizeable proportion of the Board of the other two listed public companies.

Gan in his affidavit asserts that he acted in all honesty and in good faith without any element of moral turpitude on his part and that had he known or been advised that a prospectus was required before invitations could be sent out to the selected members of the public he would most certainly have insisted that the law be complied with. He says that the interests of shareholders, creditors and employees of the companies of which he was a director or of companies which he may in future be a promoter or director would not be in any way at risk by his being a director or by being concerned or taking part in the management of any company. He submits that on the contrary his experience in the Hong Leong Group of Companies so intimate and extensive that it would be advantageous to the companies, the shareholders, creditors and employees that his application be allowed.

While it is obvious from the many directorships Gan held before his conviction which has led to this application and from the fact that he is the group General Manager of two licensed publicly listed successful finance companies that his present disqualification for a period of five years under the Act would result in personal financial loss and from the resolutions of the Board of the three listed public companies above referred to that he has the confidence of the Board of these companies, there is no suggestion that any of the companies of which he was a director or manager have been less successful or have in any way been in trouble or difficulty, management or financial after his disqualification under the Act.

It is significant, in the light of the provisions of section 39(5) and the mandatory disqualification provisions of section 130, that Gan who was represented by counsel pleaded guilty to the charge he faced under section 39(4). Furthermore, he has no personal beneficial interest in

CCC (Holdings) Ltd. or City Country Club Pte. Ltd. and is on their Board as a nominee of Queens Pte. Ltd. Accordingly, I reject Gan's application to be a director of and/or to be concerned in and take part in the management of CCC (Holdings) Ltd. and City Country Club Pte. Ltd.

In respect of Gan's application for leave to be a promoter of any company incorporated or to be incorporated in Singapore I am satisfied, having regard to the factors that a court has to consider, that leave should not be granted.

In respect of Gan's application for leave to be a director of the other 9 companies named in his application, I am satisfied, after a careful consideration of all the relevant factors, that it should be refused. However, in respect of Gan's application to be concerned in and take part in the management of those 9 named companies I am satisfied, after careful consideration of all the relevant factors and weighing the punitive effect on him against the minimal risk to the general public and the interests of their shareholders, creditors, employees and others dealing with them, that he should be permitted to be concerned in and take part in their management.

5. *Originating Summons No. 135 of 1983 – Quek Leng Chye*

Quek seeks the leave of the court to be a director or promoter of and/or be concerned in and take part in the management of any company or companies incorporated or to be incorporated in Singapore or alternatively to be a director of and/or be concerned in the management of the following companies:–

1. City Development Limited
2. Elite Holdings Pte. Ltd.
3. Garden Estates (Pte.) Ltd.
4. Gordon Properties Pte. Ltd.
5. Harbour View Hotel Pte. Ltd.
6. Hong Leong Corporation Ltd.
7. Hong Leong Development Pte. Ltd.
8. Hong Leong Finance Limited
9. Hong Leong Foundation
10. Hong Leong Holdings Ltd.
11. Hong Leong Investment Holdings Pte. Ltd.
12. Hong Leong Nominees (Pte.) Limited
13. Hong Leong Properties Pte. Ltd.
14. Hong Leong Seatran Lines Pte Ltd.
15. Hong Villa Pte. Limited
16. Hotel Orchid Limited
17. Hume Gas Cylinders Pte. Ltd.
18. Hume Industries (F.E.) Limited
19. Hume Industries (S) Ltd.
20. Humeview Pte. Limited
21. Intrepid Investments Pte. Ltd.
22. Island Concrete (Pte.) Ltd.
23. Island Holdings Pte. Ltd.
24. King's Hotel Ltd.
25. King's Tanglin Shopping Pte. Ltd.
26. Kingston Property Maintenance Services Pte. Ltd.
27. Lingo Enterprises Ltd.
28. Orchid Inn (Pte.) Ltd.
29. Paradiz Pte Ltd.
30. Sai Chieu Land Investment Pte. Ltd.
31. Singapore Credit (Pte.) Ltd.
32. Singapore Finance Limited
33. Singapore Nominees Pte. Ltd.
34. Singarab Construction Pte. Ltd.
35. Tripartite Developers Pte. Ltd.
36. Union Investment Holding Pte. Ltd.
37. Rheem (Far East) Pte. Ltd.
38. Wheel-On Ready-Mix Co (Pte.) Ltd.
39. Trade & Industrial Development Pte. Ltd.
40. CCC (Holdings) Ltd.
41. City Country Club.

Quek is an accountant. He is a member of the Quek family which controls the Hong Leong Group of companies. The Hong Leong Group of companies controls most if not all of the 41 companies listed above and Quek is a director or managing director or governor of all these 41 companies. I understand the expression "Hong Leong Group of companies" to mean the companies whose names begin with "Hong Leong". Of these 41 companies, 4 are publicly listed companies whose shares are traded in the Stock Exchange of Singapore. The 4 companies are Hong Leong Finance Ltd., City Development Ltd., Singapore Finance Ltd. and King's Hotel Ltd.

Hong Leong Finance Ltd. is a licensed finance company and has an issued and paid up capital of 70,743,750 shares of $1 each, 45% of which is held directly or indirectly by three of the above 41 companies namely, Hong Leong Investment Holdings Pte. Ltd., Hong Leong Corporation Ltd. and Hong Leong Holdings Ltd. Hong Leong Investment Holdings Pte. Ltd. is wholly owned by the Quek family. Hong Leong Corporation Ltd., which has a paid up capital of $85,000,000, is a wholly owned subsidiary of Hong Leong Investment Holdings Pte. Ltd. which has a paid up share capital of $14,000,000 and has 30 shareholders of which Quek is one with a holding of 700,000 shares. Hong Leong Holdings Ltd. which has a paid up share capital of $51,175,000 with 96 shareholders of which Quek is one with a holding of 516,000 shares.

City Development Ltd. is a property investment and development company with a paid up share capital of $133,166,068 and is a subsidiary

of Hong Leong Investment Holdings Pte. Ltd. Singapore Finance Ltd. is a licensed finance company and has a paid up share capital of $30,000,000, 75% of which is held by Hong Leong Finance Ltd. King's Hotel Ltd. has an issued and paid up share capital of $76,400,000, 74.6% of which is held directly or indirectly by City Development Ltd.

In one of his affidavits filed in support of his application, Quek deposes that Gan and he were content to leave detailed planning of the club venture to the majority shareholder Huang and to Chong who was to be an executive of the club and consequently he was not present at every meeting that was held between Huang and the professional advisers to the club. Quek says that he first came to know of the prospectus question at the September 18, 1981 meeting when Winston Chen said he was looking into it. Subsequently, at the November 17, 1981 meeting Winston Chen told the meeting that there was some difference of opinion in Messrs. Shook Lin & Bok (the firm of solicitors of which Winston Chen is a partner) as to the need of a prospectus and that he would discuss the matter with the Registrar of Companies. Quek says that at the February 2, 1982 meeting Winston Chen reported that the Registrar of Companies had given written confirmation that a prospectus was not required and advised that if the directors issued invitations only to their friends such invitations would not be invitations to the public and a prospectus would therefore not be required.

Quek goes on to say in his affidavit that in good faith he accepted and acted upon Winston Chen's advice and that had he known or been advised that a prospectus was required before invitations could be sent out he would have insisted that the law be complied with. He says that the interests of the shareholders, creditors and employees of the 41 companies or of the companies of which he may in future be a promoter or director would not in any way be at risk by his being a director or being concerned or taking part in their management but on the contrary his experience in the Hong Leong Group of companies has been so intimate and extensive that it would be advantageous to the companies, the shareholders, creditors and employees if his application is granted.

In Quek's case, he similarly pleaded guilty to the charge he faced under section 39(4). Also Quek, like Gan is on the Board of CCC (Holdings) Ltd. and City Country Club Pte. Ltd. as a nominee of Queens Pte. Ltd. Accordingly, I reject his application for leave to be a director or be concerned in the management of CCC (Holdings) Ltd. and City Country Club Pte. Ltd.

In respect of Quek's application for leave to be a promoter of any company incorporated or to be incorporated in Singapore I am satisfied, having regard to the factors that a court has to consider, that leave should not be granted.

In respect of Quek's application for leave to be a director of the other 39 companies named in his application, I am satisfied, after careful consideration of all the relevant factors, that leave should not be granted. However, in respect of his application to be concerned in and take part in the management of those 39 companies, I am satisfied, for the reasons I have given in acceding to Gan's similar application, that Quek should be permitted to take part in their management.

Accordingly, there will be orders in accordance with this judgment in respect of each of the five Originating Summonses.

The applicants will pay the costs of the Attorney-General.

Order accordingly.

Solicitors: *Lee & Lee; Murphy & Dunbar; Khattar Wong & Partners.*

KIAN HONG HOLDINGS PTE. LTD. v. OHBAYASHI-GUMI LTD.

[O.C.J. (Abdul Wahab Ghows J.) October 11, 1983]
[Singapore – Originating Summons No. 242 of 1982]

Contract – Construction – Main contract – Sub-contract – Inconsistency – Arbitration Act (Cap. 16), ss. 28 & 28A.

The claimants sued the respondents for work done under a sub-contract.

The Arbitrator and the parties consented to refer several questions in dispute to the court for its determination under the Arbitration Act. The facts appear in the judgment.

Held: (1) unless it is clearly stated in the sub-contract one must not assume that the sub-contractor agreed to undertake the risks the contractor accepted under the